

issues and statement of the case contained in the appeal brief. Any reply brief shall be confined to matters raised in the answering brief and shall be limited to 15 pages in length.

(3) Any matter not briefed shall be deemed waived, and may not be argued before the Commission.

(e) *Appendix to briefs*—(1) *Designation of contents of appendix*. At the time an appellant serves and files its appeal brief, it shall also serve and file a designation of those specific parts of the record to which it wishes to direct the particular attention of the Commission and that it wishes to have included in the appendix, including, but not necessarily limited to, particular pages of the transcript and portions of exhibits filed in the proceeding. The designation shall be set forth in a document wholly separate and apart from the brief, shall enumerate those specific parts of the record that the appellant wishes to have included in the appendix and shall not incorporate by reference citations to the record contained in its brief or in any other document. If an appellee deems it necessary to direct the particular attention of the Commission to specific parts of the record not designated by any appellant, it shall serve and file with its answering brief a designation of additional portions of the record for inclusion in the appendix. Any reply brief filed by the appellant may, if necessary, supplement the appellant's previous designation. In designating parts of the record for inclusion in the appendix, the principal parts of the record relied upon should be designated, but the parties shall have regard to the fact that the entire record is always available to the Commission for reference and examinations and shall not engage in unnecessary designation. The fact that a part of the record is not included in an appendix shall not prevent any party or the Commission from relying thereon.

(2) *Preparation of the appendix*. Within 15 days after the last answering brief or reply brief of a party was due to be filed, the Office of Proceedings shall prepare an appendix to the briefs which will contain a list of the relevant docket entries filed in the proceedings before the Administrative Law Judge, the initial decision and order of the Ad-

ministrative Law Judge, the pleadings filed on behalf of the parties who are participating in the appeal and such other parts of the record designated by the parties to the appeal in accordance with the procedures set forth in paragraph (e)(1) of this section. The Proceedings Clerk shall cause one copy of the appendix to be served on each of the parties to the appeal and shall cause ten copies of the appendix to be placed in the docket of the proceeding for the use of the Commission.

(3) *Objections to appendix*. Any party who believes that an error or omission has been made in the preparation of the appendix or that the appendix is misleading, prejudicial or otherwise inadequate may on that basis file a motion with the Commission to amend or supplement the appendix within 30 days of the date of the mailing of the appendix.

The Commission has determined that once an appeal goes to the Commission, it is in a better position than the Chief Administrative Law Judge to review motions objecting to the appendix or seeking to supplement the appendix. Consequently, upon the adoption of this amendment, the Commission and not the Chief Administrative Law Judge will consider any objection to the appendix pursuant to paragraph (e)(3) of this section. As provided by the amendment, a motion raising objections to the appendix must be filed within 30 days after the date of the mailing of the appendix.

(f) *Effect of failure to file an appeal*. Timely appeal to the Commission for review of an initial decision is mandatory as a prerequisite to seeking judicial review of a final decision entered pursuant to these Rules of Practice.

(7 U.S.C. Secs. 4a, 12a; 5 U.S.C. Sec. 10)

[41 FR 2511, Jan. 16, 1976, as amended at 41 FR 18071, Apr. 30, 1976; 41 FR 19932, May 14, 1976; 47 FR 5999, Feb. 10, 1982; 60 FR 54802, Oct. 26, 1995; 61 FR 21954, May 13, 1996; 63 FR 55794, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998; 64 FR 30903, June 9, 1999]

§ 10.103 Oral argument before the Commission.

(a) *Request*. Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission,

which the Commission may in its discretion grant or deny. A request for oral argument must be made within the time provided for filing the initial briefs.

(b) *Time allowed.* Unless otherwise directed by the Commission, not more than one-half hour will be allowed for oral argument by any participant. Where the same or similar interests are represented by more than one participant, an aggregate of not more than one-half hour will be allowed the interests so represented irrespective of the number of participants, the time to be divided equally among such participants or as they may agree among themselves. In appropriate cases the Commission may, in its discretion, extend, shorten or reallocate the time prescribed herein.

(c) *Reporting and transcription.* Oral arguments before the Commission shall be reported and transcribed in written form unless the Commission shall direct otherwise.

(d) *Commissioners not present at oral argument.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding. Any Commissioner participating in the decision who was not present at the argument will review the transcript of argument.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

§ 10.104 Scope of review; Commission decision.

(a) *Scope of review.* The Commission will ordinarily consider the whole record on review, and base its determination thereon. However, it may limit the issues to those presented in the statement of issues in the brief.

(b) *Decision on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial decision by the Administrative Law Judge and make any findings or conclusions which in its judgment are proper based on the record in the proceeding. The Commission's decision shall be contained in its opinion and order. In the event the Commission is equally divided as to its decision the initial decision will be affirmed, without opinion.

(c) *Contents of record.* The record of the proceeding before the Commission for final decision shall include:

(1) The complaint, notice of hearing, answers and any amendments thereto;

(2) Any application, motion or objection made during the course of the proceeding, briefs in support thereof, rulings thereon and exceptions thereto;

(3) Any admission or stipulations between the parties, and documents or papers filed in connection with prehearing conferences; and the record of prehearing conferences, if recorded;

(4) The transcript of testimony taken at the hearing, together with exhibits received at the hearing;

(5) Any statements filed under the shortened procedure;

(6) Portions of the official public records of the Commission specified in any of the above;

(7) Any proposed findings of fact, conclusions of law and briefs in support thereof, which were filed in connection with the hearing;

(8) Any written communication accepted by the Administrative Law Judge pursuant to §§10.34 and 10.35 relating to limited participation;

(9) The initial decision and the petition for review;

(10) Any other documents which appear on the docket of the proceeding.

§ 10.105 Review by Commission on its own initiative.

The Commission may on its own initiative, within 30 days after the initial decision has been served on all parties, direct review of any initial decision of an Administrative Law Judge. The Commission shall determine the scope of the review and the issues which will be considered and make provisions for the filing of briefs and oral argument, if deemed appropriate by the Commission. Notice that the Commission has directed review on its own initiative shall be served on all parties by the Proceedings Clerk.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

§ 10.106 Reconsideration; stay pending judicial review.

(a) *Reconsideration.* Within 15 days after service of a Commission opinion and order any party may file with the